

Illinois Commerce Commission JULIE Enforcement Process

Background

On July 27, 2001, Governor Ryan signed House Bill 2138 (Public Act 92-0179) revising the Illinois Underground Utility Facilities Damage Prevention Act ("[the Act](#)"). The Act outlines the responsibilities of underground utility facility operators and excavators with regard to notifying the State-Wide One-Call Notice System (otherwise known as "JULIE"), marking of underground utility facilities, and excavating near utility facilities. One of the revisions to the Act was to make the Illinois Commerce Commission ("Commission") responsible for enforcement of violations of the Act.

The Commission's enforcement duties begin on July 1, 2002. The Commission will be responsible for receiving violation reports, determining if a violation of the Act occurred, and assessing fines with maximum penalties ranging from \$1,000 to \$5,000 per violation. All penalties collected by the Commission are required by the Act to be given as a grant to JULIE to support JULIE's safety and informational programs to reduce incidents of damage to underground utility facilities. While the revisions to the Act make the Commission responsible for enforcement, the Act does not specify how the Commission will implement its new duties. 83 Ill. Adm. Code 265, "Protection of Underground Public Utility Facilities" ("[Part 265](#)") describes the Commission's process to investigate reported violations of the Act. The process envisioned by the Act and detailed by Part 265 outlines a three-step investigation and review process. The first step is the submission of a violation report and investigation by Commission Staff. The next step is an appeal and review of the incident by the Advisory Committee. The final step is an appeal to the Commission for a formal hearing. Below is a summary of the three-step enforcement process as outlined in the Act and Part 265.

Three-Step Enforcement Process

Step 1 - Initial Review by Staff

The enforcement process begins with a violation report. Any person may report a suspected violation of the Act by submitting a report form to the Commission Staff. Reports can be submitted online, by mail, e-mail or telephone. Once a violation report is submitted, Commission Staff will investigate the matter and determine whether a violation occurred. Staff's investigation may include, among other things, one or more of the following:

- 1) Records verification,
- 2) Informal meetings,
- 3) Teleconferences,
- 4) Photographic documentation; and
- 5) Comments or correspondence obtained from involved parties.

When a violation report is submitted, Staff will always inform the alleged violator of the investigation and request the alleged violator's version of the events involved. If Staff determines that a violation has occurred, Staff will also consider the appropriate amount, if any, of penalty to assess. In determining the penalty amount, the Act requires that the Staff consider:

- 1) Gravity of noncompliance with the law;
- 2) The alleged violator's culpability;
- 3) The alleged violator's history of noncompliance;
- 4) The alleged violator's ability to pay the penalty;
- 5) The alleged violator's good faith in attempting to comply with the law;
- 6) The alleged violator's ability to continue in business; and
- 7) Any other special circumstances relevant to the matter. [220 ILCS 50/11(j)]

Penalties assessed cannot exceed the maximums provided by Section 11 of the Act, which are either \$1000, \$2500, or \$5000 depending on the type of violation.

If Staff determines that a violation has occurred, Staff will issue to the alleged violator either a notice of violation or a warning letter. Copies of these documents will also be provided to the person who reported the suspected violation and, if different, to the owner of the facilities involved. If Staff determines that a violation has not occurred, Staff will also inform the alleged violator, the reporting person, and, if different, the owner of the facilities involved.

The notice of violation will set forth the date, time, and location of the incident, briefly describe the circumstances surrounding the incident, cite the provision or provisions of the Act allegedly violated and specify the amount of the penalty being assessed. The notice will also advise the alleged violator of options to resolve or contest the matter.

The alleged violator will have 30 days after the date of the mailing of the notice of violation, to either pay the penalty specified in the notice or request that the Advisory Committee consider the matter. Timely payment of the proposed penalty will conclude the matter. If the alleged violator either fails to pay the proposed penalty within the time allotted or requests that the Advisory Committee consider the case, the matter is then referred to the Advisory Committee for consideration.

Step 2 - Advisory Committee Review

The Advisory Committee will meet on a monthly basis at the Commission's offices in either Chicago or Springfield, Illinois to review contested penalties. The Advisory Committee is a peer review panel of 5 members, consisting of one representative of each of the following entities; Utility facility operator, Municipality, Excavator, JULIE, Inc., and the general public.

In evaluating the merits of a case, the Advisory Committee will consider the violation report, the results of Staff's investigation, correspondence from the witnesses and

parties, and any other pertinent information. Alleged violators have the right to speak to the Advisory Committee when the Committee is considering their case during the regularly scheduled meetings, provided that proper notice is given. An alleged violator desiring to address the Committee must provide notice 5 business days before the Committee meeting, to the Staff of the Commission. If proper notice is not given, the opportunity for the alleged violator to speak at the Advisory Committee meeting will be at the discretion of the Committee. The Advisory Committee will render a decision within 90 days after the date on which the alleged violator requests that the Advisory Committee consider the case or the case is referred by Staff to the Advisory Committee, whichever is later. If the Advisory Committee fails to act within 90 days, Staff's violation notice and penalty assessment shall be considered the finding of the Advisory Committee.

If the Advisory Committee concludes that a violation has not occurred, it will direct Staff to so inform the alleged violator, the reporting person, and, if different, the owner of the facilities involved.

If the Advisory Committee concludes that a violation has occurred, the Advisory Committee will also determine the appropriate amount, if any, to assess as a penalty. In determining the penalty amount, the Advisory Committee will consider the same 7 items mentioned previously regarding staff's penalty assessment. If the Advisory Committee concludes that a penalty should be assessed for the violation, the Committee will direct Staff to issue a letter informing the alleged violator of the decision on the Committee's behalf. If the Advisory Committee concludes that no penalty should be assessed, the Committee will direct Staff to issue a warning letter to the alleged violator on the Committee's behalf.

If the Advisory Committee decides to assess a penalty, the alleged violator must pay the penalty amount within 30 days after the date of the mailing of the letter informing the alleged violator of the Committee's decision. Payment of the penalty by the alleged violator will conclude the matter. If, within 30 days after the date of the mailing of the letter informing the alleged violator of the Advisory Committee's decision, the alleged violator has not paid the amount of the penalty assessed by the Advisory Committee, or if the alleged violator requests that the matter be heard by the Commission, Staff shall then prepare and submit to the Commission an order initiating a proceeding to determine whether a violation has occurred and a penalty should be assessed.

Step 3 - Illinois Commerce Commission Formal Adjudicatory Proceedings

The final step in the three-step process is a formal proceeding before an Administrative Law Judge, and ultimately, a vote by the Commission. These proceedings will typically require submission of legal documents and submission of testimony by witnesses and parties involved in the case. Normally, parties involved in these proceedings retain the advice of counsel. Proceedings will be conducted in conformity with Article X of the Public Utilities Act, 83 Ill. Adm. Code 200, and the provisions of Subpart E of Part 265.

Any answer or responsive pleading to the order initiating the formal proceeding must be filed with the Commission within 7 days after the respondent receives notice of the order.

Reasonable discovery specific to the issues of the matter may commence upon the initiation of the formal proceeding. Responses to discovery requests are due 14 days after receipt, unless otherwise specified by the Administrative Law Judge.

The Administrative Law Judge will schedule a pre-hearing conference within 14 days after the date on which the case is initiated.

Hearings will begin within 60 days after the date on which the formal proceeding is initiated. Staff, the respondent, and any intervening parties will be entitled to present evidence and argument in oral or written form as deemed appropriate by the Administrative Law Judge. The Commission will issue a written decision resolving the case within 180 days after the date on which the formal proceeding is initiated.

The preceding description of the JULIE enforcement process is a summary of the requirements set forth in the Act and Part 265. As such, the Act and Part 265 take precedence over the descriptions contained herein.

Questions regarding the enforcement process can be addressed to <mailto:digsafe@icc.state.il.us> or call (217) 782-5911.

Illinois Compiled Statutes

Utilities

Illinois Underground Utility Facilities Damage Prevention Act

220 ILCS 50/

[[HOME](#)] [[CHAPTERS](#)] [[PUBLIC ACTS](#)] [[SEARCH](#)] [[BOTTOM](#)]

(220 ILCS 50/)

(220 ILCS 50/1)

Sec. 1. This Act shall be known and may be cited as the Illinois Underground Utility Facilities Damage Prevention Act.

(Source: P.A. 86-674.)

(220 ILCS 50/2)

Sec. 2. Definitions. As used in this Act, unless the context clearly otherwise requires, the terms specified in Sections 2.1 through 2.8 have the meanings ascribed to them in those Sections.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.1)

Sec. 2.1. "Person" means an individual, firm, joint venture, partnership, corporation, association, municipality or other governmental unit, department or agency, utility cooperative, or joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

(Source: P.A. 86-674.)

(220 ILCS 50/2.2)

Sec. 2.2. Underground utility facilities. "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by a public utility (as is defined in the Illinois Public Utilities Act, as amended), or by a municipally owned or mutually owned utility providing a similar utility service, except an electric cooperative as defined in the Illinois Public Utilities Act, as amended, or by a pipeline entity transporting gases, crude oil, petroleum products, or other hydrocarbon materials within the State or by a telecommunications carrier as defined

in the Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as amended, or by a community antenna television system, hereinafter referred to as "CATS", as defined in the Illinois Municipal Code, as amended.
(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.3)

Sec. 2.3. Excavation. "Excavation" means any operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing, and driving but does not include farm tillage operations or railroad right-of-way maintenance or operations or coal mining operations regulated under the Federal Surface Mining Control and Reclamation Act of 1977 or any State law or rules or regulations adopted under the federal statute, or land surveying operations as defined in the Illinois Professional Land Surveyor Act of 1989 when not using power equipment.
(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.4)

Sec. 2.4. "Demolition" means the wrecking, razing, rending, moving, or removing of a structure by means of any power tool, power equipment (exclusive of transportation equipment) or explosives.
(Source: P.A. 86-674.)

(220 ILCS 50/2.5)

Sec. 2.5. "Damage" means the contact or dislocation of any underground utility facility or CATS facility during excavation or demolition which necessitates immediate or subsequent repair by the owner of such facility.
(Source: P.A. 86-674.)

(220 ILCS 50/2.6)

Sec. 2.6. Emergency locate request. "Emergency locate request" means a locate request for any condition constituting an imminent danger to life, health, or property, or a utility service outage, and which requires immediate repair or action.
(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.7)

Sec. 2.7. Tolerance zone. "Tolerance zone" means the approximate location of underground utility facilities or CATS facilities defined as

a strip of land at least 3 feet wide, but not wider than the width of the underground facility or CATS facility plus 1-1/2 feet on either side of such facility based upon the markings made by the owner or operator of the facility. Excavation within the tolerance zone requires extra care and precaution including, but not limited to, as set forth in Section 4.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.8)

Sec. 2.8. Approximate location. "Approximate location" means a strip of land at least 3 feet wide, but not wider than the width of the underground facility or CATS facility plus 1.5 feet on either side of the facility.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/3)

Sec. 3. The owners or operators of underground utility facilities or CATS facilities that are not currently participants in the State-Wide One-Call Notice System shall, within 6 months of the effective date of this Act, join the State-Wide One-Call Notice System. This Section shall not apply to utilities operating facilities or CATS facilities exclusively within the boundaries of a municipality with a population of at least one million persons.

(Source: P.A. 86-674.)

(220 ILCS 50/4)

Sec. 4. Required activities. Every person who engages in nonemergency excavation or demolition shall:

(a) take reasonable action to inform himself of the location of any underground utility facilities or CATS facilities in and near the area for which such operation is to be conducted;

(b) plan the excavation or demolition to avoid or minimize interference with underground utility facilities or CATS facilities within the tolerance zone by utilizing such precautions that include, but are not limited to, hand excavation, vacuum excavation methods, and visually inspecting the excavation while in progress until clear of the existing marked facility;

(c) if practical, use white paint, flags, stakes, or both, to outline the dig site;

(d) provide notice not more than 14 days nor less than 48 hours (exclusive of Saturdays, Sundays and holidays) in advance of the start of the excavation or demolition to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System or, in the case of nonemergency excavation or demolition within

the boundaries of a municipality of at least one million persons which operates its own one-call notice system, through the one-call notice system which operates in that municipality;

(e) provide, during and following excavation or demolition, such support for existing underground utility facilities or CATS facilities in and near the excavation or demolition area as may be reasonably necessary for the protection of such facilities unless otherwise agreed to by the owner or operator of the underground facility or CATS facility; and

(f) backfill all excavations in such manner and with such materials as may be reasonably necessary for the protection of existing underground utility facilities or CATS facilities in and near the excavation or demolition area.

At a minimum, the notice required under clause (d) shall provide:

(1) the person's name, address, and (i) phone number at which a person can be reached and (ii) fax number;

(2) the start date of the planned excavation or demolition;

(3) the address at which the excavation or demolition will take place;

(4) the type and extent of the work involved; and

(5) section/quarter sections when the above information does not allow the State-Wide One-Call Notice System to determine the appropriate geographic section/quarter sections. This item (5) does not apply to residential property owners.

Nothing in this Section prohibits the use of any method of excavation if conducted in a manner that would avoid interference with underground utility facilities or CATS facilities.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/5)

Sec. 5. Notice of preconstruction conference. When the Illinois Department of Transportation notifies an owner or operator of an underground utility facility or CATS facility that the Department will conduct a preconstruction conference concerning new construction, reconstruction, or maintenance of State highways in and near the area in which such owner or operator has placed underground utility facilities, such notification shall, except as otherwise provided in this Section constitute compliance by the Department or its contractors with paragraphs (a), (b), and (d) of Section 4 of this Act. In instances when notification of a preconstruction conference is provided to the owner or operator of an underground utility facility or CATS facility but no specific date is established at the preconstruction conference for the new construction, reconstruction or maintenance of State highways in and near the area in which the owner or operator has placed

underground utility facilities or CATS facilities, then the Department or its contractors shall later comply with paragraph (d) of Section 4 of this Act.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/6)

Sec. 6. Emergency excavation or demolition.

(a) Every person who engages in emergency excavation or demolition outside of the boundaries of a municipality of at least one million persons which operates its own one-call notice system shall take all reasonable precautions to avoid or minimize interference between the emergency work and existing underground utility facilities or CATS facilities in and near the excavation or demolition area, through the State-Wide One-Call Notice System, and shall notify, as far in advance as possible, the owners or operators of such underground utility facilities or CATS facilities in and near the emergency excavation or demolition area, through the State-Wide One-Call Notice System. At a minimum, the notice required under this subsection (a) shall provide:

(1) the person's name, address, and (i) phone number at which a person can be reached and (ii) fax number;

(2) the start date of the planned emergency excavation or demolition;

(3) the address at which the excavation or demolition will take place; and

(4) the type and extent of the work involved.

A 2-hour wait time exists after an emergency locate notification request is made through the State-Wide One-Call Notice System. If the conditions at the site dictate an earlier start than the 2-hour wait time, it is the responsibility of the excavator to demonstrate that site conditions warranted this earlier start time.

(b) Every person who engages in emergency excavation or demolition within the boundaries of a municipality of at least one million persons which operates its own one-call notice system shall take all reasonable precautions to avoid or minimize interference between the emergency work and existing underground utility facilities or CATS facilities in and near the excavation or demolition area, through the municipality's one-call notice system, and shall notify, as far in advance as possible, the owners and operators of underground utility facilities or CATS facilities in and near the emergency excavation or demolition area, through the municipality's one-call notice system.

(c) The reinstallation of traffic control devices shall be deemed an emergency for purposes of this Section.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/7)

Sec. 7. Damage or dislocation. In the event of any damage to or dislocation of any underground utility facilities or CATS facilities in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation or demolition operations shall immediately notify the affected utility and the State-Wide One-Call Notice System.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/8)

Sec. 8. Liability or financial responsibility.

(a) Nothing in this Act shall be deemed to affect or determine the financial responsibility for any operation under this Act or liability of any person for any damages that occur unless specifically stated otherwise.

(b) Nothing in this Act shall be deemed to provide for liability or financial responsibility of the Department of Transportation, its officers and employees concerning any underground utility facility or CATS facility located on highway right-of-way by permit issued under the provisions of Section 9-113 of the Illinois Highway Code. It is not the intent of this Act to change any remedies in law regarding the duty of providing lateral support.

(c) Neither the State-Wide One-Call Notice System nor any of its officers, agents, or employees shall be liable for damages for injuries or death to persons or damage to property caused by acts or omissions in the receipt, recording, or transmission of locate requests or other information in the performance of its duties as the State-Wide One-Call Notice System, unless the act or omission was the result of willful and wanton misconduct.

(d) Any residential property owner who fails to comply with any provision of this Act and damages underground utility facilities or CATS facilities while engaging in excavation or demolition on such residential property shall not be subject to a penalty under this Act, but shall be liable for the damage caused to the owner or operator of the damaged underground utility facilities or CATS facilities.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/9)

Sec. 9. When it is shown by competent evidence in any action for damages to underground utility facilities or CATS facilities that such damages resulted from excavation or demolition and that the person engaged in such excavation or demolition failed to comply with the provisions of this Act, that person shall be deemed prima facie guilty of negligence. When it is shown by competent evidence in any action for

damages to persons, material or equipment brought by persons undertaking excavation or demolition acting in compliance with the provisions of this Act that such damages resulted from the failure of owners and operators of underground facilities or CATS facilities to comply with the provisions of this Act, those owners and operators shall be deemed prima facie guilty of negligence.

(Source: P.A. 86-674.)

(220 ILCS 50/10)

Sec. 10. Record of notice; marking of facilities. Upon notice by the person engaged in excavation or demolition, the person owning or operating underground utility facilities or CATS facilities in or near the excavation or demolition area shall cause a written record to be made of the notice and shall mark, within 48 hours (excluding Saturdays, Sundays and holidays) of receipt of notice, the approximate locations of such facilities so as to enable the person excavating or demolishing to establish the location of the underground utility facilities or CATS facilities.

All persons subject to the requirements of this Act shall plan and conduct their work consistent with reasonable business practices. Conditions may exist making it unreasonable to request that locations be marked within 48 hours. It is unreasonable to request owners and operators of underground utility facilities and CATS facilities to locate all of their facilities in an affected area upon short notice in advance of a large or extensive nonemergency project, or to request extensive locates in excess of a reasonable excavation or demolition work schedule, or to request locates under conditions where a repeat request is likely to be made because of the passage of time or adverse job conditions. Owners and operators of underground utility facilities and CATS facilities must reasonably anticipate seasonal fluctuations in the number of locate requests and staff accordingly.

If a person owning or operating underground utility facilities or CATS facilities receives a notice under this Section but does not own or operate any underground utility facilities or CATS facilities within the proposed excavation or demolition area described in the notice, that person, within 48 hours (excluding Saturdays, Sundays, and holidays) after receipt of the notice, shall so notify the person engaged in excavation or demolition who initiated the notice, unless the person who initiated the notice expressly waives the right to be notified that no facilities are located within the excavation or demolition area. The notification by the owner or operator of underground utility facilities or CATS facilities to the person engaged in excavation or demolition may be provided in any reasonable manner including, but not limited to, notification in any one of the following ways: by face-to-face

communication; by phone or phone message; by facsimile; by posting in the excavation or demolition area; or by marking the excavation or demolition area. The owner or operator of those facilities has discharged the owner's or operator's obligation to provide notice under this Section if the owner or operator attempts to provide notice by telephone or by facsimile, if the person has supplied a facsimile number, but is unable to do so because the person engaged in the excavation or demolition does not answer his or her telephone or does not have an answering machine or answering service to receive the telephone call or does not have a facsimile machine in operation to receive the facsimile transmission. If the owner or operator attempts to provide notice by telephone or by facsimile but receives a busy signal, that attempt shall not serve to discharge the owner or operator of the obligation to provide notice under this Section.

A person engaged in excavation or demolition may expressly waive the right to notification from the owner or operator of underground utility facilities or CATS facilities that the owner or operator has no facilities located in the proposed excavation or demolition area. Waiver of notice is only permissible in the case of regular or nonemergency locate requests. The waiver must be made at the time of the notice to the State-Wide One-Call Notice System. A waiver made under this Section is not admissible as evidence in any criminal or civil action that may arise out of, or is in any way related to, the excavation or demolition that is the subject of the waiver.

For the purposes of this Act, underground facility operators may utilize a combination of flags, stakes, and paint when possible on non-paved surfaces and when dig site and seasonal conditions warrant. If the approximate location of an underground utility facility or CATS facility is marked with stakes or other physical means, the following color coding shall be employed:

Utility or Community Antenna Television Systems and Type of Product	Identification Color
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Electric Power, Distribution and

Transmission.....	Safety Red
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Municipal Electric Systems.....	Safety Red
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Gas Distribution and Transmission.....	High Visibility Safety Yellow
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Oil Distribution and Transmission.....	High Visibility Safety Yellow
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Telephone and Telegraph Systems.....	Safety Alert Orange
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Community Antenna Television Systems..	Safety Alert Orange
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Water Systems.....	Safety
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	Precaution Blue
Sewer Systems.....	Safety Green
Non-potable Water and Slurry Lines....	Safety Purple
Temporary Survey.....	Safety Pink
Proposed Excavation.....	Safety White
(Source: P.A. 92-179, eff. 7-1-02.)	

(220 ILCS 50/11)

Sec. 11. Penalties; liability; fund.

(a) Every person who, while engaging in excavation or demolition, wilfully fails to comply with the Act by failing to provide the notice to the owners or operators of the underground facilities or CATS facility near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 of this Act shall be subject to a penalty of up to \$5,000 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

(b) Every person who, while engaging in excavation or demolition, has provided the notice to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 of this Act, but otherwise wilfully fails to comply with this Act, shall be subject to a penalty of up to \$2,500 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

(c) Every person who, while engaging in excavation or demolition, has provided the notice to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 of this Act, but otherwise, while acting reasonably, damages any underground utility facilities or CATS facilities, shall not be subject to a penalty, but shall be liable for the damage caused to the owners or operators of the facility provided the underground utility facility or CATS facility is properly marked as provided in Section 10 of this Act.

(d) Every person who, while engaging in excavation or demolition, provides notice to the owners or operators of the underground utility facilities or CATS facilities through the State-Wide One-Call Notice System as an emergency locate request and the locate request is not an emergency locate request as defined in Section 2.6 of this Act shall be subject to a penalty of up to \$2,500 for each separate offense.

(e) Owners and operators of underground utility facilities or CATS facilities who wilfully fail to comply with this Act by a failure to mark the location of an underground utility or CATS facility, after

being notified of planned excavation or demolition through the State-Wide One-Call Notice System, shall be subject to a penalty of up to \$5,000 for each separate offense resulting from the failure to mark an underground utility facility or CATS facility.

(f) As provided in Section 3 of this Act, all owners or operators of underground utility facilities or CATS facilities who fail to join the State-Wide One-Call Notice System by January 1, 2003 shall be subject to a penalty of \$100 per day for each separate offense. Every day an owner or operator fails to join the State-Wide One-Call Notice System is a separate offense. This subsection (f) does not apply to utilities operating facilities or CATS facilities exclusively within the boundaries of a municipality with a population of at least 1,000,000 persons.

(g) No owner or operator of underground utility facilities or CATS facilities shall be subject to a penalty where a delay in marking or a failure to mark or properly mark the location of an underground utility or CATS facility is caused by conditions beyond the reasonable control of such owner or operator.

(h) Any person who is neither an agent, employee, or authorized locating contractor of the owner or operator of the underground utility facility or CATS facility nor an excavator involved in the excavation activity who removes, alters, or otherwise damages markings, flags, or stakes used to mark the location of an underground utility or CATS facility other than during the course of the excavation for which the markings were made or before completion of the project shall be subject to a penalty up to \$1,000 for each separate offense.

(i) The excavator shall exercise due care at all times to protect underground utility facilities and CATS facilities. If, after proper notification through the State-Wide One-Call Notice System and upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility or CATS facility in the area of the proposed excavation, the excavator shall not begin excavating until 2 hours after an additional call is made to the State-Wide One-Call Notice System for the area. The operator of the utility or CATS facility shall respond within 2 hours of the excavator's call to the State-Wide One-Call Notice System.

(j) The Illinois Commerce Commission shall have the power and jurisdiction to, and shall, enforce the provisions of this Act. The Illinois Commerce Commission may impose administrative penalties as provided in this Section. The Illinois Commerce Commission may promulgate rules and develop enforcement policies in the manner provided by the Public Utilities Act in order to implement compliance with this Act. When a penalty is warranted, the following criteria shall be used in determining the magnitude of the penalty:

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance;
- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.

(k) There is hereby created in the State treasury a special fund to be known as the Illinois Underground Utility Facilities Damage Prevention Fund. All penalties recovered in any action under this Section shall be paid into the Fund and shall be distributed annually as a grant to the State-Wide One-Call Notice System to be used in safety and informational programs to reduce the number of incidents of damage to underground utility facilities and CATS facilities in Illinois. The distribution shall be made during January of each calendar year based on the balance in the Illinois Underground Utility Facilities Damage Prevention Fund as of December 31 of the previous calendar year. In all such actions under this Section, the procedure and rules of evidence shall conform with the Code of Civil Procedure, and with rules of courts governing civil trials.

(l) The Illinois Commerce Commission shall establish an Advisory Committee consisting of a representative from each of the following: utility operator, JULIE, excavator, municipality, and the general public. The Advisory Committee shall serve as a peer review panel for any contested penalties resulting from the enforcement of this Act.

The members of the Advisory Committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such Advisory Committee, unless the act or omission was the result of willful and wanton misconduct.

(m) If, after the Advisory Committee has considered a particular contested penalty and performed its review functions under this Act and the Commission's rules, there remains a dispute as to whether the Commission should impose a penalty under this Act, the matter shall proceed in the manner set forth in Article X of the Public Utilities Act, including the provisions governing judicial review.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/11.3)

Sec. 11.3. Emergency telephone system outages; reimbursement. Any person who negligently damages an underground facility or CATS facility causing an emergency telephone system outage must reimburse the public safety agency that provides personnel to answer calls or to maintain or operate an emergency telephone system during the outage for the agency's

costs associated with answering calls or maintaining or operating the system during the outage. For the purposes of this Section, "public safety agency" means the same as in Section 2.02 of the Emergency Telephone System Act.

(Source: P.A. 92-149, eff. 1-1-02.)

(220 ILCS 50/11.5)

Sec. 11.5. Limitation on liability.

(a) In joining the State-Wide One-Call Notice System, a municipality's liability, under any membership agreement rules and regulations, for the indemnification of (i) the entity that is in charge of or managing the System or any officer, agent, or employee of that entity or (ii) a member of the System or any officer, agent, or employee of a member of the System shall be limited to claims arising as a result of the acts or omissions of the municipality or its officers, agents, or employees or arising out of the operations of the municipality's underground utility facilities.

(b) Subsection (a) shall not be construed to create any additional liability for a municipality in relation to any member of the System with which the municipality may have entered into a franchise agreement. If a municipality's liability for indemnification under a franchise agreement is narrower than under this Section, the franchise agreement controls.

(Source: P.A. 90-481, eff. 8-17-97.)

(220 ILCS 50/12)

Sec. 12. No action may be brought under Section 11 of this Act unless commenced within 2 years after the date of violation of this Act.

(Source: P.A. 86-674.)

(220 ILCS 50/13)

Sec. 13. Mandamus or injunction. Where public safety or the preservation of uninterrupted, necessary utility service or community antenna television system service is endangered by any person engaging in excavation or demolition in a negligent or unsafe manner which has resulted in or is likely to result in damage to underground utility facilities or CATS facilities or proposing to use procedures for excavation or demolition which are likely to result in damage to underground utility facilities or CATS facilities, or where the owner or operator of underground utility facilities or CATS facilities endangers an excavator by willfully failing to respond to a locate request, the owner or operator of such facilities or the excavator or the State's Attorney or the Illinois Commerce Commission at the request of the owner or operator of such facilities or the excavator may commence an action in the circuit court for the county in which the excavation or

demolition is occurring or is to occur, or in which the person complained of has his principal place of business or resides, for the purpose of having such negligent or unsafe excavation or demolition stopped and prevented or to compel the marking of underground utilities facilities or CATS facilities, either by mandamus or injunction.
(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/14)

Sec. 14. Home rule. The regulation of underground utility facilities and CATS facilities damage prevention, as provided for in this Act, is an exclusive power and function of the State. A home rule unit may not regulate underground utility facilities and CATS facilities damage prevention, as provided for in this Act. All units of local government, including home rule units, must comply with the provisions of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.
(Source: P.A. 92-179, eff. 7-1-02.)

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